

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>BILLY J. WALKER</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 158,685 & 180,248
<b>BOEING MILITARY AIRPLANES</b>	)	
Respondent	)	
AND	)	
	)	
<b>AETNA CASUALTY &amp; SURETY COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

This matter comes on before the Appeals Board upon the application of claimant's attorney for review of an Order dated December 29, 1994 entered by Administrative Law Judge Shannon S. Krysl, wherein Judge Krysl awarded attorney fees under the above docket numbers pursuant to K.S.A. 44-536.

**ISSUES**

Claimant and his attorney settled the above docketed cases on December 15, 1994. Claimant alleged injury through August 19, 1991 in Docket No. 158,685. This matter was settled for a lump sum payment of \$10,000, of which claimant's attorney, Mr. Wilson, was found to be entitled to twenty-five percent (25%) per K.S.A. 44-536. Docket 180,248 was settled for \$40,000 lump sum, with claimant alleging an injury date through July 2, 1993.

Claimant's attorney, Mr. Wilson, realizing a modification in the language of K.S.A. 44-536 had taken effect July 1, 1993, advised the court that an issue regarding his entitlement to attorney fees and the amount of entitlement was before the court and that an appropriate decision from the court would be necessary.

Mr. Wilson also raised the issue of the constitutionality of K.S.A. 44-536.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Judge Krysl, in evaluating K.S.A. 44-536 both before and after July 1, 1993, found claimant entitled to twenty-five percent (25%) of the \$10,000 Award in Docket No. 158,685. The language of K.S.A. 44-536(a) applicable for an injury date of August 19, 1991 allowed for a reasonable amount of such services or twenty-five percent (25%) of the amount of compensation recovered and paid, whichever is less. The Administrative Law Judge, in awarding twenty-five percent (25%) of the total award to the attorney for the claimant, appropriately followed the language of K.S.A. 44-536(a).

K.S.A. 44-536 was amended on July 1, 1993. At that time, the legislature placed into effect a graduated attorney fee computation schedule which allows twenty-five percent (25%) of that portion of total compensation which is less than \$10,001; twenty percent (20%) of that portion of total compensation recovered and paid which is greater than \$10,000, but less than \$20,001; and fifteen percent (15%) of that portion of the total amount of compensation recovered and paid which is in excess of \$20,000, or a reasonable amount for such services, whichever is less. Judge Krysl, in awarding Mr. Wilson attorney fees, followed the language of K.S.A. 44-536(a) and awarded claimant's attorney \$7,500 of the \$40,000 lump sum payment. The remaining \$2,500, which represents the difference between a twenty-five percent (25%) across-the-board attorney fee share and the graduated attorney fee share, as listed in post-July 1, 1993 K.S.A. 44-536(a) was ordered paid into an interest-bearing trust account pending appeal of this matter.

The Appeals Board will next deal with the issue of the constitutionality of K.S.A. 44-536 as it deals with attorney fees allowable under the Workers Compensation Act in the State of Kansas.

The Appeals Board has held in past cases that the constitutionality of a statute is presumed and, absent a contrary ruling by a court of competent jurisdiction, the Appeals Board will continue to so hold.

"We start with the proposition that the constitutionality of a statute is presumed; that all doubts must be resolved in favor of its validity, and before the statute may be stricken, it must clearly appear the statute violates the Constitution. It is the court's duty to uphold the statute under attack, if possible, rather than defeat it. If there is any reasonable way a statute may be construed constitutionally permissible, that should be done." State ex rel. Stephan v. Martin, 230 Kan. 747, 751, 641 P.2d 1011 (1982).

As such, the Appeals Board finds that, absent a contrary decision by a court of competent jurisdiction, K.S.A. 44-536 is constitutional and the Appeals Board will enforce same as written.

In finding the 1993 amendment of K.S.A. 44-536 to apply, the Appeals Board also finds that the decision of Administrative Law Judge Shannon S. Krysl awarding claimant's attorney \$7,500 in attorney fees in Docket No. 180,248, followed the specific language of K.S.A. 44-536(a), is appropriate and should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krsyl, dated December 29, 1994, shall be, and is hereby, affirmed in that claimant's attorney is awarded \$2,500 in attorney fees in Docket No. 158,865 and \$7,500 in attorney fees in Docket No. 180,248 for a total attorney fee of \$10,000.

As this matter was raised upon claimant attorney's own motion in bringing this fee issue before the court, the Appeals Board commends Mr. Wilson for his actions.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Steven R. Wilson, Wichita KS  
Frederick L. Haag, Wichita KS  
James R. Roth, Wichita KS  
Shannon S. Krsyl, Administrative Law Judge  
George Gomez, Director